

## HOUSE BILL NO. 274

INTRODUCED BY PETERSON, LAKE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA AGRICULTURAL FEED LAWS TO INCREASE LICENSING AND REGISTRATION FEES, TO ESTABLISH MINIMUM AND MAXIMUM LICENSING, REGISTRATION, AND INSPECTION FEES, AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADJUST THESE FEES BY RULE; AMENDING SECTIONS 80-9-101, 80-9-201, 80-9-202, 80-9-206, AND 80-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 80-9-101, MCA, is amended to read:

**"80-9-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "AOAC international" means the association of official analytical chemists.

(2) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) (a) "Commercial feed" means all materials or combinations of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(4) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to that person and under which that person's remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.

(5) "Customer formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(6) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(7) "Distributor" means a person who distributes commercial feed.

(8) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure or function of the animal body.

(9) "Facility" means something that is built, installed, or established to serve a particular purpose.

(10) "Feed ingredient" means each of the constituent materials making up a commercial feed or a noncommercial feed.

(11) "Guarantor" means a person whose name and principal mailing address appear on the label and who guarantees the information contained on the label as required by 80-9-202. The person may or may not also be the manufacturer.

~~(10)~~(12) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

~~(11)~~(13) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

~~(12)~~(14) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

~~(13)~~(15) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

~~(14)~~(16) (a) "Noncommercial feed" means all materials or combinations of materials that are used as feed or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities,

compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

~~(15)~~(17) "Official sample" means a sample of feed taken by the department in accordance with the provisions of 80-9-301.

~~(16)~~(18) "Percent" or "percentage" means percentage by weights.

~~(17)~~(19) "Person" means an individual, partnership, corporation, or association.

~~(18)~~(20) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

~~(19)~~(21) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

~~(20)~~(22) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

~~(21)~~(23) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

~~(22)~~(24) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

~~(23)~~(25) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

~~(24)~~(26) "Ton" means a net weight of 2,000 pounds avoirdupois."

**Section 2.** Section 80-9-201, MCA, is amended to read:

**"80-9-201. Licenses and registration.** (1) Except as provided in subsection (4)(b), a license is required of a facility or person:

(a) who manufactures commercial feed in this state;

(b) who distributes commercial feed in or into this state; or

(c) whose name appears on the label of a commercial feed as guarantor.

(2) (a) A separate license is required for each facility that manufactures commercial feed within this state or for each facility that distributes commercial feed in or into this state. A facility or person that manufactures, distributes, or is a guarantor for commercial feed ~~need~~ must be licensed ~~only~~ once annually pursuant to this section.

(b) (i) ~~At~~ Except as provided in this subsection (2)(b)(i), all new applicants shall pay a nonrefundable

1 fee of ~~\$75~~ \$100 per each calendar year for a license for each facility, ~~distribution point, or point of invoicing.~~ The  
2 department may by rule adjust the license fee to maintain adequate funding for the administration of this part.  
3 The fee may not be less than \$100 a year or more than \$110 a year.

4 (ii) ~~License~~ Except as provided in this subsection (2)(b)(ii), license renewals received by the department  
5 prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of ~~\$50~~ \$75 for each  
6 license. The department may by rule adjust the license fee to maintain adequate funding for the administration  
7 of this part. The fee may not be less than \$75 a year or more than \$85 a year.

8 (3) Applicants for licensure shall file with the department information on forms provided by the  
9 department, including the following:

10 (a) the applicant's name and place of business;

11 (b) the mailing address and physical location of the facility to be licensed; ~~and~~

12 (c) an indication of whether the facility to be licensed manufactures feed, distributes feed, or both; and

13 (d) an indication of whether or not the person applying for licensure is a guarantor.

14 (4) (a) A license granted under this section remains in force until the end of the calendar year for which  
15 it is issued or until canceled by the licensee or by the department for cause. The department may collect a \$25  
16 late penalty fee for a license renewal application received after January 1 of any year. A license is  
17 nontransferable, and license fees are nonrefundable.

18 (b) A license is not required for a distributor who distributes only pet food or specialty pet food.

19 (5) A person who manufactures for distribution or who distributes commercial feed in this state shall,  
20 upon written request by the department, submit the following information regarding products distributed in this  
21 state:

22 (a) a list of feed products;

23 (b) all labeling, promotional material, and claims for any feed product;

24 (c) analytical methods for ingredients claimed or listed on a label, if the methods are not available from  
25 AOAC international; and

26 (d) replicated data performed by a reputable investigator whose work is recognized as acceptable by  
27 the department, verifying any claims for effectiveness of a feed product.

28 (6) (a) A person may not manufacture for distribution or distribute in this state a pet food or specialty  
29 pet food that has not been registered under this section by the manufacturer or the guarantor. ~~The~~ Except as  
30 provided in this subsection (6)(a), the application for registration must be accompanied by a nonrefundable fee

1 of ~~\$25~~ \$50 for each pet food or specialty pet food. The department may by rule adjust the registration fee to  
2 maintain adequate funding for the administration of this part. The fee may not be less than \$50 a year or more  
3 than \$60 a year.

4 (b) The registration of pet food and specialty pet food is for a period of 1 year ~~commencing~~ starting  
5 January 1 and ending December 31 of each year.

6 (7) An applicant for registration of a pet food or specialty pet food shall file with the department the  
7 following information:

8 (a) the applicant's name and address; and

9 (b) a complete standard list of all products being registered.

10 (8) The department may refuse registration of a pet food or specialty pet food that is not in compliance  
11 with this chapter and may cancel any registration subsequently found to not ~~to~~ be in compliance with this  
12 chapter. A registration may not be refused or canceled unless the registrant has been given an opportunity to  
13 be heard before the department and to amend the application in order to comply with this chapter."  
14

15 **Section 3.** Section 80-9-202, MCA, is amended to read:

16 **"80-9-202. Labeling.** (1) A commercial feed, except a customer formula feed, must be accompanied  
17 by a label containing:

18 (a) the quantity statement;

19 (b) the product name and any brand name under which the commercial feed is distributed;

20 (c) the guaranteed analysis stated in terms the department by rule determines are required to advise  
21 the user of the composition of the feed or to support claims made in the labeling. The substances or elements  
22 guaranteed must be determinable by laboratory methods such as the methods published by AOAC international.

23 (d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The  
24 department by rule may permit the use of a collective term for a group of ingredients ~~which~~ that perform a similar  
25 function, or it may exempt commercial feeds or any group of them from this requirement of an ingredient  
26 statement if it finds that the statement is not required in the interest of consumers.

27 (e) the name and principal mailing address of the manufacturer, ~~or~~ the person responsible for  
28 distributing the commercial feed, or the guarantor;

29 (f) adequate directions for use for all commercial feeds containing drugs. The department may by rule  
30 require directions for the use of other commercial feeds when necessary for their safe and effective use.

(g) precautionary statements ~~which~~ that the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A customer formula feed must be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer or guarantor;

(b) the name and address of the purchaser;

(c) the date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

(e) adequate directions for use for all customer formula feed containing drugs. The department may by rule require directions for the use of other customer formula feeds when necessary for their safe and effective use.

(f) precautionary statements ~~which~~ that the department by rule determines are necessary for safe and effective use of the feeds;

(g) in cases when a drug-containing product is used in a customer formula feed:

(i) the purpose of the drug in the form of a claim statement; and

(ii) the established name of each active drug ingredient and the level of each drug used in the final mixture, expressed in accordance with the association of American feed control officials model feed regulations, as published in that organization's official publication and adopted by department rule."

**Section 4.** Section 80-9-206, MCA, is amended to read:

**"80-9-206. Inspection fees -- filing of annual statement.** (1) An inspection fee must be paid on all commercial feeds, including customer formula feeds, except pet foods and specialty pet foods, distributed in this state as follows:

(a) The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor is responsible for inspection fees if the manufacturer has not paid them.

(b) ~~The~~ Except as provided in this subsection (1)(b), the inspection fee is 18 cents a ton. Inspection fees must be paid on each commercial feed, including customer formula feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant or transferred from one plant to another within the same

organization are exempt. The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 18 cents a ton or more than 25 cents a ton.

(c) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in the feeding operation at the site, but is responsible for any unpaid inspection fees on commercial feed purchased by that person and on any commercial feed that person produces and distributes other than in that person's feeding operations at the site.

(2) Each person who holds a license as required in 80-9-201(1) shall:

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year ~~(January 1 through December 31)~~ and, upon filing the statement, shall pay the inspection fee. Inspection fees that have not been remitted to the department on or before January 31 have a penalty fee of 10% or a minimum of \$10, whichever is more, added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records that are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a license."

**Section 5.** Section 80-9-301, MCA, is amended to read:

**"80-9-301. Enforcement -- inspection -- notice -- sampling and analysis.** (1) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, distributed, or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in a factory, warehouse, establishment, or vehicle. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under 80-9-204(14).

(2) The department may enter premises to inspect, sample, and analyze noncommercial feeds and ingredients. The department shall provide at least 2 hours' notice prior to the inspection and must be accompanied by the owner or the owner's representative. However, the department's authority is limited to determining whether the feeds and ingredients are adulterated for commercial feed purposes as provided in 80-9-204. The department may issue orders or condemn noncommercial feeds in the same manner as provided for commercial feeds in 80-9-302.

(3) Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be notified of the completion.

(4) If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

(5) To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis must be conducted in accordance with methods published by AOAC international or with other generally recognized methods.

(7) The results of all analyses of official samples must be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the official sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, must be guided by the official sample ~~as defined in 80-9-101(15) and~~ obtained and analyzed as provided for in subsections (4) through (6) ~~of this section~~.

(9) All official analyses must be performed cooperatively by the department and the agricultural experiment station at Montana state university-Bozeman. However, the department may arrange with other laboratories for specific analyses conducted as part of an official analysis."

**NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

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